

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Residential Building
Contractor License of Lakeland
Remodeling & Construction, Inc., and
Dale D. Ogdahl, Individually

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on July 27, 2009, at 9:30 a.m. at the Office of Administrative Hearings in St. Paul, Minnesota. Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry ("the Department"). There was no appearance by or on behalf of the Respondents, Lakeland Remodeling & Construction, Inc., and Dale D. Ogdahl. The Department filed a motion for a default judgment/summary disposition against the Respondents on July 28, 2009. The OAH record remained open until August 11, 2009, for receipt of a response from the Respondents. No response was received, and the OAH record closed on August 11, 2009.

STATEMENT OF ISSUES

The issues presented in this case are as follows:

- (1) whether the Respondents, Lakeland Remodeling & Construction, Inc., and Dale D. Ogdahl, its president, 100% shareholder, and qualifying person, provided false and misleading information on Lakeland's license application by failing to disclose that Mr. Ogdahl and a former licensee with whom he was affiliated had been defendants in numerous civil lawsuits and named in outstanding civil judgments;
- (2) whether Mr. Ogdahl engaged in substandard workmanship on a previous remodeling project;
- (3) whether Lakeland Remodeling failed to list its license number on its website and instead listed the expired license number of another contractor; and
- (4) whether, by virtue of the above, the Respondents performed negligently or in breach of contract so as to cause harm to the public; engaged in a fraudulent, deceptive, or dishonest practice; or engaged in conduct that demonstrates that they are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the Commissioner, and thus are subject to disciplinary action as set forth in the Commissioner's March 31, 2009, Licensing Order.

The Administrative Law Judge concludes that the Respondents did engage in the misconduct alleged by the Department, there are grounds for the Commissioner to

impose discipline, and the March 31, 2009, Licensing Order issued by the Commissioner should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 5, 2008, the Department issued Respondent Lakeland Remodeling & Construction, Inc. ("Lakeland Remodeling"), a residential building contractor license (License No. 20632053). The president, 100% shareholder, and qualifying person of Lakeland Remodeling is Dale D. Ogdahl.¹ Previously Mr. Ogdahl was involved with another licensee, Lakeland Door & Remodeling Corporation ("Lakeland Door"), which was licensed by the Department as a residential building contractor under License No. 20134082 from May 5, 1998, until the license was voluntarily terminated on November 5, 2008.²

2. On the license application for Lakeland Remodeling that was filed on or about September 2, 2008, Respondents represented that they had never been defendants in a lawsuit involving claims of breach of contract, had never been the subject of any outstanding unsatisfied judgments relating to any residential contracting or residential remodeling activities, and had never been affiliated with a residential contractor that engaged in any activities that would result in an affirmative answer to those questions.³ However, Lakeland Door and/or Mr. Ogdahl were, in fact, named as defendants in at least five prior lawsuits (four involving suppliers and/or subcontractors, and one involving homeowners), and judgments were obtained against them in those lawsuits between August 2007 and June 2008 in the amounts of \$22,807.69, \$34,075.53, \$14,104.17, \$15,627.06, and \$1,401.64.⁴ Only the \$22,807.69 judgment was satisfied as of the date of Lakeland Remodeling's license application.⁵ The homeowners who obtained the judgment for \$14,104.17 sought and received a court order directing payment of \$6,770.58 from the Contractor's Recovery Fund.⁶

3. On February 20, 2009, Mr. Ogdahl d/b/a Lakeland Door & Remodeling filed an individual Chapter 7 bankruptcy petition.⁷ The case was dismissed on June 10, 2009, due to Mr. Ogdahl's failure to appear and submit to examination at the meeting of creditors.⁸

4. The website of Lakeland Remodeling does not list its own license number, but instead lists the expired license number of Lakeland Door.⁹

¹ March 31, 2009, Licensing Order, p. 2, ¶¶1-2 (attached to and incorporated in Notice and Order for Prehearing Conference); Exhibit 11, pp. 3-5; Exhibit 15.

² March 31, 2009, Licensing Order, p. 2, ¶ 3; Exhibit 12.

³ March 31, 2009, Licensing Order, p. 2, ¶ 4; Exhibit 11, p. 2 (Questions 5, 8, and 11).

⁴ Exhibits 1-5, 12, 13; March 31, 2009, Licensing Order, p. 2-3, ¶ 4.

⁵ Exhibit 13.

⁶ Exhibit 10.

⁷ March 31, 2009, Licensing Order, p. 3, ¶6; Exhibit 16.

⁸ March 31, 2009, Licensing Order, p. 3, ¶ 6; Exhibit 17.

⁹ March 31, 2009, Licensing Order, p. 3, ¶5; Exhibits 14, 18.

5. On March 31, 2009, the Department served Respondents Lakeland Remodeling and its principal, Dale D. Ogdahl, individually, with a Licensing Order which revoked the residential building contractor's license of Lakeland Remodeling. The Order also required Lakeland Remodeling and Mr. Ogdahl individually and doing business under any business name to cease and desist from acting or holding themselves out as a residential building contractor, residential remodeler, or residential roofer in the state of Minnesota.¹⁰

6. On or about April 30, 2009, the Department received Respondents' request for a hearing to contest the March 31, 2009, Order.¹¹

7. The Notice and Order for Prehearing Conference initiating this contested case proceeding was served on the Respondents via first class mail on May 8, 2009, at the following address: 1541 – 221st Ave. N.W., Cedar, MN 55011.¹²

8. The Notice and Order for Prehearing Conference contained the following language:

Respondents' failure to appear at the hearing or any prehearing conference, or any failure to comply with an order of the Administrative Law Judge, may result in a finding that the Respondents are in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.¹³

9. The Notice and Order for Prehearing Conference set a prehearing conference for June 24, 2009, at 1:30 p.m.¹⁴

10. On June 24, 2009, Mr. Ogdahl participated in the prehearing conference on behalf of Lakeland Remodeling and himself. During the prehearing conference, the Administrative Law Judge ordered that this case would be consolidated for hearing with another case (*In the Matter of the Residential Building Contractor License of Lakeland Door and Remodeling Corporation*, OAH Docket No. 11-1902-20516-2). The hearing in the consolidated cases was set to commence on July 27, 2009, at 9:30 a.m., in the courtrooms of the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. This date was confirmed in the First Prehearing Order sent to the parties by the Administrative Law Judge on June 29, 2009.

11. On or about July 22, 2009, Mr. Ogdahl sent a fax to counsel for the Department indicating that he was voluntarily surrendering the license for Lakeland Remodeling.¹⁵

¹⁰ Notice and Order for Prehearing Conference, p. 2, ¶¶ 1-2; March 31, 2009, Licensing Order (attached to Notice and Order for Prehearing Conference).

¹¹ Notice and Order for Prehearing Conference, p. 2, ¶ 4; Exhibit 19.

¹² Affidavit of Service by First Class Mail of Ann Kirlin attached to Notice and Order for Prehearing Conference.

¹³ Notice and Order for Prehearing Conference, p. 3, ¶1.

¹⁴ Notice of Hearing, p. 1.

¹⁵ Exhibit 20.

12. On or about July 22, 2009, Mr. Ogdahl contacted the Administrative Law Judge and indicated that he wished to postpone the hearing until the following month. The Administrative Law Judge told Mr. Ogdahl to contact counsel for the Department to find out if the Department had any objection to a continuance and, if the Department objected, to contact the Administrative Law Judge so that a conference call could be arranged to discuss the request. Mr. Ogdahl never contacted the Administrative Law Judge to request a conference call.

13. On Friday, July 24, 2009, the Administrative Law Judge left a voice mail message for Mr. Ogdahl in which she informed him that the hearing remained set for Monday, July 27, 2009. In the message, the Judge directed Mr. Ogdahl to call her that day (July 24, 2009) if he still wanted a continuance so the request could be discussed in a conference call with the parties. The Administrative Law Judge never received a return call from Mr. Ogdahl.

14. No one appeared at the hearing on July 27, 2009, on behalf of the Respondents. The Respondents were not granted a continuance prior to the hearing. The Respondents did not contact the Administrative Law Judge between the date of the hearing and the date of this Report to offer any explanation for their failure to appear.

15. Because the Respondents failed to appear at the hearing in this matter, they are in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Department of Labor and Industry have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 326B.082, 326.083, and 326B.84.

2. The Notice and Order for Prehearing Conference issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondents, having made no appearance at the hearing, and not receiving a continuance or other relief, are in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference are hereby taken as true.

4. Minn. Stat. § 326B.84 authorizes the Commissioner of Labor and Industry to deny, suspend, limit, place conditions on, or revoke a license, or censure the person holding the license, if the licensee, qualifying person, or agent owner:

- (1) has filed an application for licensure . . . which is incomplete in any material respect or contains any statement which, in light of the

circumstances under which it is made, is false or misleading with respect to any material fact;

(2) has engaged in a fraudulent, deceptive, or dishonest practice;

* * *

(4) has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public;

(5) has violated or failed to comply with any provision of sections 326B.802 to 326B.885, any rule or order under sections 326B.802 to 326B.885, or any other law, rule, or order related to the duties and responsibilities entrusted to the commissioner; [or]

* * *

(15) has engaged in an act or practice whether or not the act or practice directly involves the business for which the person is licensed, that demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the commissioner. . . .

5. Minn. Stat. § 326B.082, subd. 12, authorizes the Commissioner to issue a licensing order revoking a license, imposing monetary penalties of up to \$10,000 for each violation, and requiring that the person cease and desist from committing the violation.

6. Minn. Stat. § 326B.87, subd. 2, states that “[t]he license number of a licensee must appear in any advertising by that licensee including but not limited to signs, vehicles, business cards, published display ads, flyers, brochures, Web sites, and Internet ads.”

7. Minn. Rules part 2891.0040 states that acts and practices that will be considered fraudulent, deceptive, or dishonest practices for purposes of Minn. Stat. § 326B.84, subd. 1(2) include “misrepresentation of a material fact by the applicant in obtaining a license” and “engaging in false, fraudulent, or misleading advertising.”

8. Based upon the facts alleged in the Notice and Order for Prehearing Conference and reflected in Exhibits 1-20 which were received during the hearing, the Respondents have provided false, misleading, and deceptive information in connection with their application for licensure, have harmed the public by performing negligently or in breach of contract, have failed to display their proper license number, and have engaged in conduct that demonstrated that they are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under a residential building contractor license, in violation of Minn. Stat. § 326B.84(1), (2), (4), (5), and (15), Minn. Stat. § 326B.87, subd. 2, and Minn. Rules 2891.0040. Specifically, the Respondents made deceptive, false and misleading representations as to material facts by failing to disclose on Lakeland Remodeling’s license application that Mr. Ogdahl and a former licensee with whom he had been affiliated had been defendants in numerous civil lawsuits and named in outstanding civil judgments; Mr. Ogdahl performed negligently or in breach of contract or otherwise engaged in an act that demonstrates incompetence or

lack of qualification for licensure by engaging in substandard workmanship on a previous remodeling project; and Lakeland Remodeling engaged in a fraudulent, deceptive, or dishonest practice and violated applicable rules by failing to list its license number on its website and instead listing the expired license number of another contractor.

9. The Respondents are subject to discipline and/or a civil penalty pursuant to Minn. Stat. §§ 326B.082, 326B.083, and 326B.84. The imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the March 31, 2009, Licensing Order issued by the Commissioner of Labor and Industry against the Respondents, Lakeland Remodeling & Construction, Inc., and Dale D. Ogdahl, Individually, be AFFIRMED.

Dated: September 4, 2009

s/Barbara L. Neilson

BARBARA L. NEILSON

Administrative Law Judge

Reported: Digitally recorded (no transcript prepared).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.